

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**VICTORIA WELLS-BONNETT,**

**Plaintiff,**

**v.**

**ACE HARDWARE CORPORATION,  
d/b/a Ace Hardware & Garden  
Center (Highland, Illinois) and  
ACE HARDWARE & GARDEN  
CENTER (Highland, Illinois),**

**Defendants.**

**Case No. 09-cv-446-DRH**

**ORDER**

**HERNDON, Chief Judge:**

Plaintiff in this case, Victoria Wells-Bonnett, filed her Complaint against the defendants, Ace Hardware Corporation, d/b/a Ace Hardware & Garden Center (Highland, Illinois) and Ace Hardware & Garden Center, (Highland, Illinois), on June 11, 2009. As of this date, Plaintiff has failed to effectuate service upon those defendants in accordance with **FED. R. CIV. P. 4(m)**.

Federal courts have the inherent power to, *sua sponte*, dismiss a case for a plaintiff's failure to prosecute. ***Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-631 (1962)**. However, in most instances courts must provide the plaintiff with due warning before dismissing a case for failure to prosecute. ***Ball v. City of Chicago*, 2 F.3d 752, 756 (7th Cir. 1993)**. A dismissal for failure to prosecute counts as an adjudication on the merits. **FED. R. CIV. P. 41(b)**. Rule 4(m) provides that "[i]f a defendant is not

served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” **FED. R. CIV. P. 4(m)**.

Here, the Court provided Plaintiff due warning with its Notice of Impending Dismissal (Doc. 4), issued on January 22, 2010. To date, Plaintiff has yet to file an executed return of service or to seek additional time for service. Thus, for Plaintiff's failure to prosecute this case, it is hereby **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED.**

Signed this 1st day of March, 2010.

/s/ David R. Herndon

**Chief Judge  
United States District Court**